THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No. 804 of 2004

Dated: 27th Day of July 2005

-

-

Mr. M.Venkata Rami Reddy, s/o M.Bala Venkata Rami Reddy, Door No.5/726, Devangapeta Street, Proddatur, Kadapa District. A.P.

Petitioner

And

The Superintending Engineer, Operation

Circle, A.P. Southern Power Distribution

Company Ltd., Kadapa, A.P.

Respondent.

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No. 804 of 2004

O R D E R:

This Writ Petition is filed seeking a Mandamus declaring the action of the respondent in rejecting the candidature of the petitioner for the post of Junior Lineman on the ground that the petitioner is over-aged as on 1.8.2003 as per the guidelines stipulated for recruitment to the said post, as illegal and

arbitrary.

Before adverting to the question as to whether the action of the respondent suffers from any legal infirmity requiring any interference as such by this Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ petition.

The petitioner, after completing the National Trade Certificate Course in Electrical Trade in 1992 underwent apprenticeship training for a period of two years from 22.2.1996 to 22.2.1998 with the respondent. After completion of training, the respondent refused to provide any regular appointment to him. Therefore, he filed W.P.No.10148 of 1998 before this Court, and this Court, by order dated 15.4.1998, directed the respondent to consider the case of the petitioner for selection and appointment whenever they proceed to fill up the said post by way of direct recruitment. The petitioner's case shall be considered on preferential basis before considering the claim of others. Thereafter, the respondent-company had issued proceedings on 31.10.1998 informing the petitioner that at that stage there was no direct recruitment in APSE Board for the post of Assistant Lineman/Helper/Welder, as and when direct recruitment takes place in the circle, his case would be considered. Thereafter, a notification had been issued calling for the applications from the eligible candidates for the post of Junior Lineman. As per the said notification, the age limit therein was fixed for the open category candidates as 25 years. As the petitioner was not within the age of 25 years, his case was not considered. It is further case of the petitioner that he has got issued legal notice through his counsel, for which the respondent-company, by its proceedings dated 29.10.2003, informed the petitioner's counsel that the petitioner's case was rejected on the ground that he was over aged.

The respondent filed counter-affidavit inter alia denying the contentions raised by the petitioner and stated that as per Service Rules, the petitioner's candidature was not considered as he was over-aged at the time of notification and he secured only 483 marks in ITI, whereas the last candidate in the

interview secured 547 marks in ITI.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondent company and perused the material available on record.

The learned counsel for the petitioner contended that the petitioner underwent apprenticeship training and no absorption was given and so, he filed a Writ Petition before this Court, and this Court directed the respondent to consider his case as and when direct recruitment takes-place, on priority basis. Thereafter, a notification had been issued inviting applications for direct recruitment to the post of 'Junior Lineman', for which the petitioner had applied, but the same has not been considered in view of the fact that the petitioner was over-aged as on 1.8.2003. He further contended that the Chief Engineer is empowered to relax the age limit in exceptional cases, and therefore, he seeks direction to consider the petitioner's case by relaxing his age limit.

On the other hand, the learned standing counsel for the respondent opposed the same on the ground that inasmuch as the petitioner was not within the age limit as per the notification, he was not qualified for the post of Junior Lineman and hence, he was not rightly called for the interview. Therefore, there are no grounds to call the petitioner for interview.

Admittedly, the petitioner underwent apprenticeship training for a period of two years from 22.2.1996 to 22.2.1998 with the respondent. In spite of completing his training, the respondent refused to provide any regular appointment, therefore, the petitioner filed W.P.No.10148 of 1998 before this Court and this Court, by order, dated 15.4.1998 directed the respondent to consider his case for selection and appointment whenever they proceeded to fill-up the said post by way of recruitment. The petitioner's case shall be considered on preferential basis before considering the claim of others. Thereafter, the respondent-company had issued proceedings on 31.10.1998 informing the petitioner that at that stage there was no direct recruitment in APSE Board for the post of

Assistant Lineman/Helper/Welder and as and when direct recruitment takes place in the circle, his case would be considered. Thereafter, the present notification was issued calling for the applications for the eligible candidates for the post of Junior Lineman. As per the said notification, the age limit therein was fixed for the open category candidates as 25 years. As the petitioner was not within the age of 25 years, his case was not considered. Therefore, the petitioner got issued legal notice through his counsel. Then the respondent-company by its proceedings dated 29.10.2003 informed the petitioner's counsel that his case was rejected on the ground that he was over aged.

The Operation of Subordinate Service Statutory Rules (for short 'Rules') governs the procedure for filling up the post of Assistant Junior Lineman. As per Clause-5 of the Rules,

> "No person shall be eligible for appointment to any category of grade, if he has completed 25 years of age on the date of appointment".

The petitioner has not challenged this statutory rule, but however, he is relying on the proviso to Clause-5, which reads as, follows:

> "Provided that this age limit shall be relaxed by the Chief Engineer for Electricity in individual cases for special reasons."

Therefore, the power is given to the Chief Engineer to relax the age limit by giving special reasons. Here, it is a special case, where, admittedly the petitioner underwent apprenticeship training with the respondent for about two years. So, in my considered opinion there can be a special reason to consider the case of the petitioner to relax the age.

The learned counsel for the petitioner relied upon a decision reported in **U.P.State Road Transport Corporation & another vs. U.P.Parivahan Nigam Shishukhs Berozgar Sangh & others**[1] wherein the Apex Court held that:

> "If age bar would come in the way of the trainee, the same

would be relaxed in accordance with what is stated in this regard, if any in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given."

So, from the above decision, it is clear that even if the rule is not provided, the relaxation can be given to the apprentice. But however, in this case, a power to relax the age was given to the Chief Engineer. Therefore, the Chief Engineer has not exercised his power in the right perspective. It is brought to the notice of this Court that one post was kept vacant. Therefore, the case of the petitioner has to be considered by giving relaxation of the age in view of the fact that he has undergone apprenticeship training under the respondent-company and the Chief Engineer can pass appropriate orders for appointment of the petitioner relaxing his age, if he is otherwise qualified in the selection process.

The Writ Petition is allowed accordingly. This exercise shall be done within two months from the date of receipt of the copy of this Order. No costs.

JUSTICE K.C. BHANU.

27th July 2005.

BCS

Note:

Issue C.C. by Monday

i.e. 1.8.2005.

B/o

BCS